

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 191, 192 and 195

[Docket No. RSPA 97-2096; Amdt Nos. 191-12; 192-81; 195-59]

RIN 2137-AC99

### Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule (DFR) would implement a provision of a December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) pipelines by redesignating the point at which an OCS pipeline is subject to RSPA regulations. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator.

**DATES:** This direct final rule takes effect March 19, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by January 20, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the Federal Register by February 17, 1998, after the close of the comment period, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and to withdraw the DFR in whole or in part. RSPA may then incorporate the adverse comment into a subsequent DFR or may publish a notice of proposed rulemaking.

**ADDRESSES:** Written comments on the subject of this DFR may be submitted to the Dockets Facility, U.S. Department of

Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590-0001. Comments should identify the docket number of this DFR, RSPA-97-2096. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to [le.herrick@rspa.dot.gov](mailto:le.herrick@rspa.dot.gov). The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

#### FOR FURTHER INFORMATION

**CONTACT:** L.E. Herrick, (202) 366-5523 or e-mail [le.herrick@rspa.dot.gov](mailto:le.herrick@rspa.dot.gov) regarding the subject matter of this DFR, or the Dockets Facility, (202) 366-5046, regarding copies of this DFR or other information in the docket.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under an MOU dated May 6, 1976, RSPA regulated hazardous liquid, carbon dioxide, and natural gas pipelines located downstream of the outlet flange of each facility where hydrocarbons are first produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. DOI regulated those pipelines located upstream of this point. The Departments agreed to change this regulatory boundary with the signing of the December 10, 1996, MOU. The 1996 MOU was the result of negotiations that began in the summer of 1993, which included a high degree of participation from the regulated industry. RSPA and DOI's Minerals Management Service (MMS) solicited public comments on a draft MOU through a joint Federal Register notice (60 FR 27546; May 24, 1995). The notice also announced a public meeting at the MMS Gulf of Mexico regional office in New Orleans, Louisiana, on August 1, 1995, to discuss the proposal. Over 70 people attended the meeting, which generated over 100 pages of comments from natural gas and petroleum trade organizations; natural gas and oil exploration and production companies; transmission companies; offshore construction companies; and industry consultants. Twenty-three individuals and organizations submitted written comments on the Federal Register notice. A transcript of this meeting and

copies of the comments are available in Docket No. RSPA-97-2096.

In May 1996, RSPA and MMS met with an industry workgroup representing OCS oil and natural gas producers and transmission pipeline operators. The workgroup proposed that the agencies allow individual operators of production and transportation facilities to define the boundaries of their respective facilities. They suggested that producers and transporters can best make such decisions based on the unique operating characteristics of each facility. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all OCS transportation pipelines beginning downstream of the point at which operating responsibility transfers from a producing operator to a transporting operator. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons.

##### Intent of the Rule

The intent of this rule is to require OCS production and transportation pipeline operators to designate the specific points on their pipelines where operating responsibility transfers from a producing operator to an adjoining transporting operator. The rule would amend 49 CFR parts 191, 192 and 195. Generally, operators will have 60 days after the date the rule becomes final to durably mark the specific points at which operating responsibility transfers. In most cases, the specific transfer points will be easily identifiable because of specific valves or flanges where the adjoining operations connect, or because of differences in paint used by adjoining operators to protect and maintain pipeline coatings or surfaces. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have 180 days after the final rule becomes effective to identify the transfer points on a schematic. The 180-day period will give operators time to identify the transfer points during routine maintenance. If it is not practicable to durably mark a transfer point, and the transfer point is located above water, then the operator must depict the transfer point on a schematic maintained near the transfer point. Some transfer points may be located underwater. In such cases, the operator must identify the transfer point

on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request.

For those instances in which adjoining operators do not or can not agree on a transfer point, RSPA's Office of Pipeline Safety (OPS) and MMS will make a joint determination of the boundary.

The OPS and MMS may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the general boundary description (operations transfer point) on a facility-by-facility or area-by-area basis. Operators may also petition OPS and MMS for exceptions to the general boundary description.

Conversion to service: A pipeline previously used in service and not subject to DOT regulations which comes under these regulations as a result of this rule-making qualifies for use under the DOT regulations if the operator prepares and follows a written procedure to carry out the requirements of 49 CFR 192.14 or 195.5 (Conversion to service subject to this part). Pipeline segments designed and constructed under DOT regulations before March 19, 1998 may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After March 19, 1998 DOI operational and maintenance requirements will apply to those segments.

#### *Rulemaking Analysis*

The December 1996 MOU redefined the DOT/DOI regulatory boundary definition from the OCS facility where hydrocarbons are "first produced, separated, dehydrated, or otherwise processed" to the point at which "operating responsibility for the pipelines transfers from a producing operator to a transporting operator". The MOU places, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation. The changes in this rule would substantially reduce the regulatory burdens currently caused by the overlapping Federal regulatory responsibilities and the inconsistencies between the requirements. The changes will substantially increase the efficiency of governmental resources on the OCS without compromising safety.

#### **Executive Order (E.O.) 12866**

RSPA reviewed this rule under E.O. 12866 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has not asked to review this rule under E.O. 12866.

#### *Regulatory Flexibility Act*

Oil and gas and production and transportation companies are classified under Standard Industrial Codes (SIC's) by the Census Bureau. The Small Business Administration further classifies "small businesses" in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees; (2) liquid pipeline companies that have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of \$25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of \$5 million or less. There are many companies on the OCS that are "small businesses" by these definitions. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources well beyond what would normally be considered "small business." These entities customarily conduct their operations by contracting with offshore drilling or service companies and therefore tend to have relatively few employees compared to the considerable financial resources of their operations.

This rule would affect a substantial number of "small entities;" however, the economic effects of the rule would not be significant. The economic effects on the oil and gas production and transportation companies directly affected by the rule would be insignificant because of the minimal costs that operators incur during the first year that the rule is implemented. (In that year, offshore producers would have to identify all points on their pipelines at which operating responsibility transfers from a producer to a transporter. In succeeding years there would be virtually no economic impact resulting from the rule.) The offshore service companies would be indirectly affected by the rule through their contractual relationships with the primary producing and transporting companies--they would not be directly regulated in any way. This rule would not impose any new restrictions on small pipeline service companies or

manufacturers, nor will it cause their business practices to change. To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers.

#### *Paperwork Reduction Act*

This rule contains a collection of information which RSPA is submitting to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of RSPA's continuing effort to reduce paperwork and respondent burdens, RSPA invites the public and other Federal agencies to comment on any aspect of the reporting burden in 49 CFR 192 and 195 as amended by this DFR. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of Transportation (Docket No. RSPA 97-2096); Washington, D.C. 20503. Send a copy of your comments to L.E. Herrick, Room 2335, 400 Seventh Street, Washington, DC 20590-0001. You may obtain a copy of the supporting statement for the collection of information by contacting the Dockets Facility.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, RSPA will consider all comments received during the comment period for this direct final rule.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of this collection of information is "49 CFR 191, 192 and 195 Pipeline Safety: Regulations Implementing Memorandum of Understanding with the Department of the Interior."

The collection of information in the DFR and for each transporter operating a pipeline consists of: (1) Reviewing existing pipeline maps, (2) conferring and agreeing with operators of adjoining production pipeline segments concerning the locations of specific transfer points, and (3) either marking directly on each pipeline or depicting on a schematic the spe-

cific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator. As stated above under the "Intent of the Rule" section, specific transfer points will be easily identifiable in most cases, either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or surfaces.

Generally operators will have until 60 days after the date the rule becomes final to durably mark the points at which operating responsibility transfers. For those relatively few instances where the transfer points are not identifiable by durable marking, operators will have 180 days after the date the rule becomes final to identify, on a schematic, the transfer points. The requirement to identify the boundary is mandatory. The RSPA will use the information to determine the demarcation where DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents, as distinguished from MMS responsibilities.

In calculating the burden, RSPA assumed that respondents perform most of the requirements and maintain records in the normal course of their activities, such as painting their pipelines and maintaining valves and flanges. RSPA considers these to be usual and customary practices and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell RSPA what are the burden hours and costs imposed by this collection of information (i.e., marking of transfer points).

The regulated community consists of approximately 160 Federal OCS oil and gas producers and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipelines transfers from a producer to a transporter. The RSPA assumes from discussions with MMS and the operators that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer points that are clearly marked, there would be no information burden. The 600 unmarked transfer points, on the other hand, would require widely-varying times for identification depending

on whether a painted line or a schematic was used to identify the transfer point.

The public reporting burden for this information collection requirement is estimated to average 5 hours per response for each transfer point. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the required marking. Based on 600 unmarked transfer points, RSPA estimates that the total one-time burden of this collection of information to be 3,000 hours total. The average annualized burden over a 3-year period would be 1,000 hours. Based on \$35 per hour, the total burden hour cost to respondents is estimated to be \$35,000 annually.

#### *Takings Implication Assessment*

The DOT certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

#### *Unfunded Mandates Reform Act of 1995*

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the \$100 million annual threshold that was established by the Unfunded Mandates Reform Act.

#### *E.O. 12988*

The DOT has certified to OMB that this regulation meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

#### *National Environmental Policy Act*

The DOT has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

#### List of Subjects

#### **49 CFR Part 191**

Gas, Pipeline safety, Reporting and recordkeeping requirements.

#### **49 CFR Part 192**

Pipeline safety, Reporting and recordkeeping requirements.

#### **49 CFR Part 195**

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, RSPA amends 49 CFR parts 191, 192 and 195 as follows:

#### **PART 191--[AMENDED]**

1. The authority citation for part 191 continues to read as follows:

**Authority:** 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.1 is amended by adding paragraph (b)(3) to read as follows:

#### **§191.1 Scope.**

\* \* \* \* \*

(b) \* \* \*

(3) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 191.3 is amended by adding a definition in alphabetical order to read as follows:

#### **§191.3 Definitions.**

\* \* \* \* \*

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

\* \* \* \* \*

#### **PART 192--[AMENDED]**

1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(5) to read as follows:

**§192.1 Scope of part.**

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(b) \*\*\*

(5) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 192.3 is amended by adding a definition in alphabetical order to read as follows:

**§192.3 Definitions.**

\*\*\*\*\*

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

\*\*\*\*\*

4. Section 192.10 is added to read as follows:

**§192.10 Outer continental shelf pipelines.**

Operators of transportation pipelines on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act; 43 U.S.C. 1331) must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

**PART 195--[AMENDED]**

1. The authority citation for part 195 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 is amended by adding a new paragraph (b)(6) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9) to read as follows:

**§195.1 Applicability.**

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(b) \*\*\*

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

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3. Section 195.2 is amended by adding a definition in alphabetical order to read as follows:

**§195.2 Definitions.**

\*\*\*\*\*

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

\*\*\*\*\*

4. Section 195.9 is added to read as follows:

**§195.9 Outer continental shelf pipelines.**

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a sche-

matic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington D.C. on November 12, 1997.

**Richard B. Felder,**  
*Associate Administrator for Pipeline Safety.*

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